

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order and not every alleged error is subject to review. The Workers Compensation Act gives this Board specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are: (1) did the worker sustain an accidental injury; (2) did the injury arise out of and in the course of employment; (3) did the worker provide the employer with timely notice and with timely written claim; and, (4) do certain other defenses apply. And the term “certain defenses” refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.¹ Moreover, the Board can review preliminary hearing orders in which an ALJ is alleged to have exceeded his or her jurisdiction.²

The issue of whether a worker needs ongoing medical treatment is not jurisdictional issues listed in K.S.A. 44-534a that is subject to review from a preliminary hearing order. That is an issue over which an ALJ has the sole authority and jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Although claimant also argues that the ALJ exceeded his jurisdiction in not ordering the medical treatment, this Board Member disagrees. The ALJ evaluated the evidence, including the independent medical examination report authored by Dr. Paul Stein and concluded that claimant failed to meet her evidentiary burden as to her entitlement to additional medical treatment. There is nothing within this determination, based upon the evidence contained within this record, that suggests the ALJ exceeded his jurisdiction in making this determination.

As provided by the Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁴

¹ *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

² K.S.A. 44-551(b)(2)(A).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

⁴ K.S.A. 44-534a(a)(2).

WHEREFORE, it is the finding of the Board that the claimant's appeal is dismissed and the Order of Administrative Law Judge Bruce E. Moore dated November 14, 2008, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of January 2009.

JULIE A.N. SAMPLE
BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
Richard Friedeman, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge